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U.S. Department of Homeland Security

Citizenship and Immigration Services

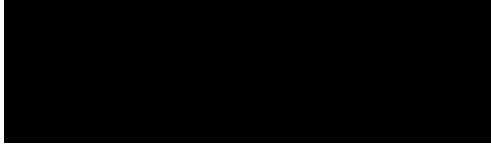
ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass. 3/F

425 I Street N.W.

Washington, D.C. 20536

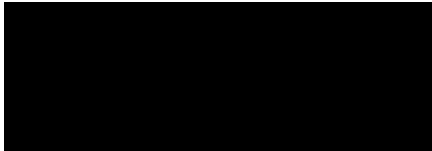
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File: EAC 01 081 53322 Office: VERMONT SERVICE CENTER

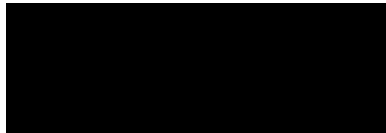
Date: FEB 10 2004

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:




INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing to the present.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's continuing ability to pay the wage offered as of the petitioner's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. The priority date in this instance is July 25, 2000. The beneficiary's salary as stated on the labor certification is \$17.00 per hour or \$35,360.00 per year.

With the petition, counsel submitted a copy of the petitioner's Internal Revenue Service (IRS) Form 1120 for 1999.

On August 2, 2001, the director requested additional evidence to establish that the petitioner had the ability to pay the proffered wage. In response, counsel submitted a copy of the petitioner's 2000 IRS Form 1120 which reflected a taxable income of -\$3,538.00. The director determined that the additional evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel submits bank statements for the period from July 2001 through November 2001, a deed to the owner of the petitioning entity's house, and a transaction statement, dated November 15, 2001, which states that there was a deposit to the petitioner's bank account of \$60,000.00.

Counsel asserts that the petitioner has submitted sufficient evidence to establish its ability to pay the wage offered to the beneficiary.

Contrary to counsel's primary assertion, Citizenship and Immigration Services (CIS), formerly the Service or INS, may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage.

Even though the petitioner submitted its bank statements for the period from July through November of 2001 to demonstrate that it had sufficient cash flow to pay the proffered wage, there is no proof that they somehow represent additional funds beyond those of the tax returns and financial statements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The deposit of \$60,000.00 into the petitioner's account in 2001 in no way demonstrates an ability to pay the proffered wage in 2000, the year of the priority date. Furthermore, there is nothing in the record to establish where this money came from and for what purpose it was deposited.

The petitioner's Form 1120 for the 2000 calendar year shows that its taxable income was -\$3,538.00. The petitioner could not pay a proffered wage of \$35,360.00 a year out of this figure.

The petitioner is obliged by 8 C.F.R. § 204.5(g)(2) to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. The evidence submitted does not demonstrate that the petitioner was able to pay the proffered wage beginning on the priority date and continuing to the present.

Beyond the decision of the director, it is noted that the petitioner failed to establish that the beneficiary has the requisite experience of two years as a specialty cook as listed on the ETA-750. The experience letter submitted with the petitioner does not specifically describe the duties the beneficiary performed for the former employer nor does it identify the writer of the letter. As the appeal will be dismissed on the grounds discussed above, this matter will not be considered further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.